



Cannabis Control Commission
101 Federal Street, 13th Floor
Boston, MA 02110

August 14, 2019

Dear Commissioners:

Thank you for the opportunity to comment on the draft adult-use marijuana regulations (935 CMR 500). Amherst's substantive comments are focused on social consumption establishments and delivery-only retailers. Before getting into substantive comments, however, I want to applaud the Cannabis Control Commission (CCC) on two significant changes that are in the public's interest.

First, the changes to the regulations that help ensure that no person or group control more than three marijuana licenses in Massachusetts. There is a clear preference in the law for a wide variety of marijuana operators, and strengthening the regulations will not only send a clear message that Massachusetts is serious about this aspect of the law, but also restrict attempts to control more than three licenses.

Second, the importance of the added protection against the collection of consumers' personal information without written consent (935 CMR 500.140(2)(c)) cannot be understated. Some consumers refuse to purchase marijuana on the legal market because they are worried about being tracked, put on a list, or risk losing a federal license (such as Commercial Drivers Licenses and federal firearms licenses). Providing protection for consumer privacy will encourage these consumers to join the legal market, furthering the legislation's goal of eliminating the illegal cannabis market.

Social Consumption

The Pilot Program is Overly Regulated

The pilot program, as proposed, are unlikely to result in successful businesses and would be cost prohibitive for social equity candidates. Instead, the pilot program should be set up to allow for a broad variety of experimental models for social consumption. A few of the issues that will curtail business success include the limitations on ways to consume cannabis, the costly ventilation systems required if the establishment allows cannabis vaporization, and the requirement that consumption areas be under observation.

Smoking remains the primary way people consume cannabis. It is what the vast majority of cannabis users are familiar with, it provides an immediate psychoactive reaction, and is less expensive than vaporization due to the lack of cannabis processing required. There

are, of course, additional risk factors with smoking, but business owners and municipalities should be given the opportunity to come up with creative solutions that would allow this as an indoor use.

The ventilation systems requirement, while critically important from a health perspective, create an additional cost that will be difficult for a business to accommodate, especially if the business cannot offer lower cost products. As we have experienced in Massachusetts with existing retail establishments, the initial startup costs and overhead for a marijuana business is very high. Combined with limited access to traditional financing, which may be especially true for social equity candidates who may lack business experience or significant assets to leverage, it may not be financially feasible for many people interested in operating a social consumption establishment.

For those who find the ventilation systems prohibitively expensive, they will be extremely limited in the cannabis products that can be offered, with the most likely and familiar products being cannabis edibles. As we know, cannabis edibles have a relatively long period between consumption and the psychoactive effect. It is unreasonable to think that people will want to spend up to an hour after consumption sitting around waiting for the edible to “kick in,” and then several more hours in the establishment experiencing the psychoactive effects in a social setting.

This is especially true given the requirement that products be consumed in an “observed area.” Who would want to enter a facility to purchase what remains a Schedule I drug under federal law, and be sent to an area where they will be observed while consuming said drug? I certainly understand the desire to ensure responsible consumption and I can understand the desire to prevent patrons from absconding from the establishment with cannabis products (but how is that any different from purchasing edible cannabis products from a retail establishment?). However, it will discourage a large number of potential patrons.

Imagine if we regulated restaurants in a similar manner. You can open a restaurant, but you can’t serve anything with pasta, rice, meat, or vegetables. You order your food and it gets delivered to your table (which by the way, is in front of a two-way mirror to ensure you don’t take any food home with you, even though you already paid for it all). Then, 45 minutes to an hour later, you are allowed to actually eat, what you came to the restaurant for in the first place. Who would go to that restaurant?

The pilot program should be flexible enough to allow the widest possible variety of businesses to attempt to enter the social consumption cannabis market and be innovative in their business models. One community may want to allow a restaurant that uses cannabis as an ingredient in meals. Another may want a performance venue, yoga studio, or massage parlor that allows cannabis consumption. A different community may not want a permanent physical location at all, but wants to host an annual music festival where social consumption occurs. A coastal community may want to allow chartered cannabis boat tours. A rural community may seek out a cannabis adventure company that

combines social consumption with nature walks, hikes, or other physical activities. The benefit of a “pilot” program is the possibility of experimentation within safe parameters.

Massachusetts has the opportunity to really explore social consumption through this pilot program and then determine how best to regulate the industry based on real world examples. A broad range of experience will provide useful data to the CCC on how to better regulate different types of social consumption establishments. Many of these business opportunities would likely be more accessible to social equity candidates due to the lower overhead costs and the ability to incorporate cannabis into other types of businesses that are already successful in the community. Further, allowing “mixed use licenses,” such as a cannabis yoga class, does not inexorably tie the business owner to the cannabis industry. Knowing how volatile the market is, businesses would be more likely to succeed if the entire business model isn’t predicated solely on cannabis, but instead was a component of a larger business plan that incorporated a more established industry.

In the absence of a flexible pilot program, the CCC should have the ability to *reduce* the exclusivity period of the pilot program if it is not accomplishing its goals. Currently, the regulations only allow for an extension of the program if goals are not being met, but what if there is a lack of qualified applicants? At the very least, the CCC should be able to open the program up to additional applicants, especially considering the high cost and uncertainty of starting a cannabis social consumption business.

Definitions of Marijuana Retailer and Marijuana Social Consumption Establishment – 500.102

The definition of Marijuana Retailer states that “Unless licensed, retailers are prohibited from offering Marijuana or Marijuana Products for the purposes of on-site social consumption on the Premises of a Marijuana Establishment.” However, this is inconsistent with 500.050(8)(a)(1), which states “A retailer cannot... allow on-site social consumption by Consumers on the Premises of the Marijuana Establishment.” The definition indicates that a license exists which would allow social consumption at a retail establishment, while the later section explicitly prohibits this from occurring. Consistent with the earlier point about a more flexible pilot program, I suggest that retail establishments that satisfy the social consumption pilot program’s requirements be allowed to add on-site social consumption at the retail establishment location.

Prohibition on Consumers Leaving Premises with Purchased Cannabis – 500.141(2)(f)

The prohibition against consumers leaving the premises of a social consumption establishment with the cannabis product(s) they purchased there has serious consequences. First, like many of the provisions relating to social consumption, this will make it more difficult for a business to be successful. Generally speaking, once a purchase takes place, the consumer expects to be able to take ownership of what was purchased. If asked to dispose of already purchased product when they leave, this will likely cause animosity towards the business and discourage customers from returning. I understand that on-site alcohol consumption is an exception, and like alcohol, cannabis is

an intoxicating substance. However, this leads to the second, and more severe consequence; it will lead to overconsumption. When given a choice between disposing of or consuming a cannabis product before leaving, it is very likely that most patrons will choose to consume it. Social consumption establishment patrons should have the option to safely consume at home, rather than over consume at the establishment.

Limitation on Sales – 500.141(3)

The Limitation on Sales section states that consumers may not purchase, and social consumption establishments may not sell, more than 20 milligrams of delta-nine-THC. Does this limitation apply to concentrates (e.g. oil for vaporization, dabs, shatter, etc.) as well as edible cannabis products? In section 500.140(3), Limitation on Sales for Retail Establishments, limitations are expressed in ounces for dry flower, grams for concentrates, and milligrams for edibles. A brief clarification of what the limitation is for concentrates, or that the same limitation applies to concentrates and edibles, would be helpful.

The same section also prohibits the sale of perishable products. First, it should be clarified that the prohibition in section (c) applies only to “Marijuana Products” as the next section presumably allows the sale of perishable products that do not contain marijuana. Second, it is not clear why this is necessary. It will severely restrict the types of cannabis products that can be sold, making the social consumption establishment less appealing, and will exclude edible cannabis producers from selling in this market. This also seems to conflict with 500.141(b)(11), which contemplates a “use-by date” on the label. If only non-perishables are allowed, when would a “use-by date” ever be included on the label?

Tobacco Consumption – 500.141(4)(b) & 500.141(9)(d)

Additional clarity on the consumption of tobacco at social consumption establishments would be helpful. As the regulations currently read, only the smoking of tobacco on the premises is prohibited. Does that mean that vaporizing nicotine is acceptable? What about consumption of tobacco products such as dip and chew? If so, explicitly stating that non-combustion methods of consuming tobacco and nicotine are allowed would clarify this section.

Further, this section appears to conflict with 500.141(9)(d), which prohibits the “consumption of tobacco or tobacco products” and would likely prohibit vaporization of nicotine, as well as non-combustion methods of tobacco consumption. At a minimum, these two sections should be consistent. If the CCC intended to prohibit all forms of tobacco consumption, I would question why that is necessary. I understand that smoking has secondary effects on those near the area of consumption, but for those social consumption establishments that allow for cannabis consumption via non-combustion heating (e.g. vaporizers), why would tobacco vaporizers be prohibited?

Outdoor Smoking Waiver – 500.141(10)(b)(2)

This section would benefit from additional clarity, as well. If the local Board of Health or Health Commissioner determines that the proposed outdoor smoking activity does not meet all three criteria, will the CCC automatically deny the waiver? Or is that only a consideration in making the determination whether to grant a waiver? Further clarification of how the Board of Health or Health Commissioner's determination will affect the CCC's waiver decision would be helpful.

Delivery-Only Retailers

Costly Requirements

As with social consumption establishments, the draft regulations require costly investments that will make it extremely difficult for economic empowerment and social equity candidates to operate a successful business. Here are a few of the requirements which increase the cost of a delivery-only cannabis retailer:

- 1) Two agents for each delivery, which doubles the employee cost of a typical delivery;
- 2) Two lock boxes: one for cannabis and cannabis products, and one for cash payments;
- 3) Secure communications device capable of being monitored at all times during delivery;
- 4) A non-mobile GPS device;
- 5) A video system and video cameras in the vehicle; and
- 6) Body cameras for each delivery-only retailer agent.

Local Taxation of Delivery Sales

The regulations are unclear as to how the local option tax on retail marijuana would apply to delivery-only retail sales. 500.145(1)(d) states that delivery-only retailers must purchase cannabis and cannabis products from a marijuana retailer. Does the delivery-only retailer pay tax to the marijuana retailer? Does the consumer pay the tax to the delivery-only retailer? If there was a delivery-only retailer located in Hadley, that purchases product from Rise, a marijuana retailer in Amherst, and delivered product to a consumer in Deerfield, to which municipality does the local option tax revenue go? How is this information tracked so municipalities can ensure that they receive what is owed?

Geographic Limitations on Delivery

The geographic limitations on delivery to only those municipalities where the delivery-only retailer is located and those that haven't banned marijuana retailers is another restriction that will reduce the customer base for this type of business and make it more difficult for delivery-only retailers be successful. The prohibition makes little sense given that residents of municipalities that have barred marijuana retailers can still travel to a physical marijuana retail location, purchase cannabis products, bring them back to the municipality where marijuana retailers are banned, and consume it there. The prohibition

won't stop consumption in these towns. At best, this regulation will force residents to use a less convenient method of obtaining cannabis and at worst, it will drive those consumers to the illegal market. This particular provision should be reconsidered.

Delivery-Only Order Regulations

Several of the order requirements for delivery-only retailers in 500.145(2) would benefit from additional clarification. First, section (b) seems to indicate that it is incumbent on the marijuana retailer to deliver the product to the delivery-only retailer, who then would deliver it to the ultimate consumer. This makes little sense. By definition, the delivery-only retailer is in the business of transporting cannabis. Why would they not be allowed to pick up orders from the bricks-and-mortar marijuana retailer and deliver it to the consumer? Requiring storefront retailers to transport orders to delivery-only retailers is bad for delivery-only retail businesses, as well as consumers. It may not be worth the physical retailer's time, effort, and expense, to transport several grams of cannabis to a delivery-only retailer, but it may well be worth it to the delivery-only retailer. This will likely lead to physical retailers waiting until they have a sufficient number of orders before transporting cannabis to the delivery-only retailer, making the consumer wait and resulting in a less pleasant experience.

Second, section (d) should reflect the language in the definition of "Residence" or the second sentence should be deleted in its entirety to avoid confusion. Reading just section (d), it would appear that deliveries to hotels and motels are allowed, even though they are explicitly excluded in the definition of a residence. The exclusion of hotels and motels from section (d) is confusing and potentially misleading.

Third, section (g) could be further clarified. Was it the intent of the CCC to allow multiple deliveries to a single address on a single day if multiple consumers place the orders? For example, in Amherst up to four non-related individuals are allowed to lease a property. If each of those four people, who live at the same residence, ordered the maximum amount, would a delivery-only retailer be allowed to deliver four ounces of cannabis on a single day to that residence?

Consumer Age Verification Process

The verification process for delivery-only retailers is another aspect of the regulations that will likely turn off consumers from purchasing this way and jeopardize the success of these types of business endeavors. First, the pre-verification of the consumer's identification is cumbersome to the consumer. Imagine a regional delivery-only retailer that had delivery agreements with Rise in Amherst, NETA in Northampton, and INSA in Easthampton. A consumer who wanted to purchase a small amount of product from each of these marijuana retailers (e.g. strain A from Rise, strain B from NETA, and strain C from INSA) would first need to appear at each of these locations and have her or his identity verified three times. It would be much more consumer friendly to require pre-verification at the physical location of the delivery-only retailer. Another option would be to require pre-verification at a single marijuana retailer, but once the consumer's identity

is confirmed, allow it to serve as pre-verification for all other marijuana retailers with whom the delivery-only retailer has delivery agreements.

Second, the regulations requiring the consumer to sign the manifest and that delivery-only agents wear body cameras will likely have a chilling effect on consumer behaviors. Per the draft regulations, marijuana retailers are prohibited from collecting consumers' personal information and therefore there is not a direct record connecting an individual to the purchase of cannabis. Unlike in-person transactions, deliveries require a consumer to sign the manifest that the consumer received the product. This, combined with the body cameras requirement, creates a direct record and video evidence of the purchase that will discourage potential consumers. I understand that these regulations are in place to ensure accurate deliveries and prevent diversion, however, I would encourage the CCC to seek alternative solutions that are less likely to discourage delivery-only consumers.

Location of Community Outreach Meetings

One aspect of the regulations that was not addressed in this draft, but could be improved, is to require that Community Outreach Meetings occur in the municipality where the marijuana establishment is seeking to locate. Nothing in the legislation, the regulations, nor the CCC's guidance document require, or even advise, applicants to hold the Community Outreach Meeting in the municipality where the marijuana establishment is proposed to be located. The CCC should consider a clarification that the Community Outreach Meeting must take place in the municipality for which the marijuana establishment is proposed, unless affirmatively waived by the municipality.

Amherst greatly appreciate all the significant thought and work that has gone into drafting these amendments, and especially those parts that clarify that no person or group control more than three marijuana licenses in Massachusetts and the consumer privacy protections. Increasing the flexibility of the social consumption pilot program and making a few changes to decrease the costs of operating a social consumption establishment or delivery-only retailer business, would be beneficial to attract and support economic empowerment and social equity candidates.

Thank you in advance for your consideration and I look forward to these comments being addressed in the final regulations. Please don't hesitate to reach out to me to discuss in more detail any of the issues raised in these comments.

Sincerely,

A handwritten signature in black ink that reads "Geoff Kravitz". The signature is fluid and cursive, with the first name "Geoff" and last name "Kravitz" clearly legible.

Geoff Kravitz
Economic Development Director
Town of Amherst
(413) 259-3079
kravitzg@amherstma.gov